

1 Hon. Ronald B. Leighton
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9 IN THE UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 PENNY THOMAS,)
13 Plaintiff,) No. C09-5547-RBL
14 v.)
15 U.S. DEPT. OF ENERGY,)
16 BONNEVILLE POWER ADMINISTRATION,) UNITED STATES' ANSWER
17 Defendant.)
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19 Defendant United States of America (hereinafter "Defendant"), by and through its
20 attorneys, Jenny A. Durkan, United States Attorney for the Western District of Washington, and
21 Robert P. Brouillard, Assistant United States Attorney for said District, hereby answers the
22 Complaint (entitled "Notice of Claim"), and asserts affirmative defenses, as follows:

23 UNITED STATES' ANSWER

24 1. Defendant admits the allegations in the first sentence of the Complaint.
25 2. Defendant lacks sufficient information or knowledge to admit or deny the allegations
26 in the second sentence of the Complaint and therefore denies said allegations.
27 3. Defendant lacks sufficient information or knowledge to admit or deny the allegations
28 in the third sentence of the Complaint and therefore denies said allegations.
29 4. Defendant denies the allegations in the fourth sentence of the Complaint and avers that
30 Defendant specifically declined to disturb any trees located in or on wetlands.

5. Defendant denies the allegations in the fifth sentence of the Complaint and avers that Defendant specifically declined to disturb any trees located in or on wetlands.

6. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the sixth sentence of the Complaint and therefore denies said allegations.

7. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the seventh sentence of the Complaint and therefore denies said allegations.

8. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the eighth sentence of the Complaint and therefore denies said allegations.

9. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the ninth sentence of the Complaint and therefore denies said allegations.

10. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the tenth sentence of the Complaint and therefore denies said allegations.

11. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the eleventh sentence of the Complaint and therefore denies said allegations.

12. Defendant admits that Plaintiff submitted an administrative tort claim to the Bonneville Power Administration on or about December 27, 2008, and denies the remaining allegations of the twelfth sentence of the Complaint.

13. Defendant admits the allegations in the thirteenth sentence of the Complaint.

14. Defendant admits the allegations in the fourteenth sentence of the Complaint.

15. Defendant denies the allegations in the fifteenth sentence of the Complaint.

16. Defendant denies each and every other allegation not specifically admitted herein

UNITED STATES' AFFIRMATIVE DEFENSES

1. Plaintiff's recovery, if any there be, is limited to the damages recoverable under the Federal Tort Claims Act.

2. The United States of America is the only proper defendant, if any there be, in this case.
28 U.S.C. § 2679(b)(1).

3. Pursuant to 28 U.S.C. § 2675(b), Plaintiff is prohibited from claiming or recovering an amount against Defendant in excess of the amount set forth in any administrative claims he may have presented to the United States.

4. Defendant hereby reserves the right to plead all other affirmative defenses or any other applicable state and federal statute which through discovery it learns may be applicable.

WHEREFORE, Defendant prays that Plaintiff take nothing, that judgment be rendered in favor of Defendant for its costs of suit incurred, and for such other and further relief as this Court may deem just.

DATED this 7th day of April, 2010.

Respectfully submitted,

JENNY A. DURKAN
United States Attorney

/s/ Robert P. Brouillard
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the United States Attorney Office for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers.

That on April 7, 2010, she electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record for the plaintiff(s):

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To the person(s) who are non CM/ECF participants, service will be made via U.S. postal service, addressed as follows:

Penny Thomas
2802 Olympic Hwy
Aberdeen, WA 98520

DATED this 7th day of April, 2010.

s/Tina Litkie
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